

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

BRENDAN DASSEY,

Petitioner,

v.

Case No. 14-CV-1310

BRIAN FOSTER, Warden,
Green Bay Correctional Institution,

Respondent.

MOTION FOR SECOND EXTENSION OF TIME TO FILE ANSWER AND BRIEF

Brian Foster, Warden, Green Bay Correctional Institution, moves this Court for a thirty-day extension of time in which to file an answer to Petitioner Brendan Dassey's petition for writ of habeas corpus, and a brief on the merits. Foster requests a due date of April 13, 2015. The reasons for this motion follow.

1. Pursuant to a November 12, 2014 Rule 4 Order, this court directed Foster to respond to petition and file a brief in support of the response by January 12, 2014. Dkt. 6.

2. Assistant Attorney General Warren Weinstein was initially assigned responsibility for representing Foster in this case. AAG Weinstein is deeply familiar with the record and proceedings in Brendan Dassey's case,

having represented the State of Wisconsin in Dassey's appeal of his conviction in the state appellate courts.

3. In late December 2014, AAG Weinstein was diagnosed with coronary artery disease, and took a medical leave in January to undergo successful quadruple-bypass surgery. (Counsel is pleased to report that AAG Weinstein is doing well, although no date has been set for his return to work.)

4. On January 5, 2015, the Department of Justice transferred this case to undersigned counsel, Assistant Attorney General Jacob Wittwer. On the same day, AAG Weinstein filed a motion requesting an extension of thirty days for Foster to file an answer to the petition, and an extension of sixty days to file a brief in support of the answer. Dkt. 11.

5. By a January 7, 2015 order, this court granted the request for an extension, ordering Foster to file an answer and response by March 13, 2015. Dkt. 13.

6. When the Dassey case was reassigned in January, undersigned counsel was already responsible for many state and federal cases, and had assignments in many of those cases that were already on extension. Since January 5, 2015, counsel has completed the following assignments in the Wisconsin Supreme Court, Wisconsin Court of Appeals, and the United States District Court for the Eastern District of Wisconsin:

a. *State v. Joel Hurley*, No. 2013AP558-CR, oral argument presented to the Wisconsin Supreme Court on January 8, 2015.

b. *State v. David Townsend*, No. 2014AP849-CR, response brief filed in the Wisconsin Court of Appeals on January 12, 2015, on second extension.

c. *State v. Lavonn Macon*, No. 2013AP2467, response to petition for review filed in the Wisconsin Supreme Court on January 14, 2015.

d. *State v. Glenn Smiley*, No. 2014AP1310-CR, response brief filed in the Wisconsin Court of Appeals on January 29, 2015, on second extension.

e. *Antonio Jackson v. Gary Boughton*, No. 14-C-1359, answer in response to petitioner's writ of habeas corpus filed in the Eastern District of Wisconsin on February 2, 2015, on first extension.

f. *State v. Alexander Siniard*, No. 2014AP1899-CR, motion for summary reversal filed in the Wisconsin Court of Appeals on February 4, 2015, in lieu of response brief, on third extension.

g. *Daniel Jackson v. Brian Foster*, No. 14-C-1254, motion to dismiss petitioner's writ of habeas corpus filed in the Eastern District court on February 11, 2015, on second extension.

h. *State v. Christopher Davis*, Nos. 2014AP2326-CR—2014AP2329-CR, response brief filed in the Wisconsin Court of Appeals on February 19, 2015, on third extension.

i. *Brian A. Maus v. Brian Foster*, No. 14-C-1393, answer in response to petitioner’s writ of habeas corpus substantially completed, and due in the Eastern District Court on March 9, 2015, on second extension.

7. Counsel also completed work in late February on a district attorney’s request to appeal an adverse circuit court decision, which included researching a novel question of law and preparing a memorandum to Department administrators on the merits of the request.

8. Because of his work on these cases, counsel has been unable to devote the substantial time necessary to complete an answer and supporting brief in this case. Unlike AAG Weinstein and Mr. Dassey’s attorneys, undersigned counsel had no familiarity with this case before it was assigned to him in January.

9. Dassey’s petition raises two claims for relief: (1) pre-trial counsel Len Kachinsky rendered ineffective assistance by breaching his duty of loyalty to Dassey; and (2) Dassey’s March 1, 2006 confession was involuntary. To prepare an answer and brief that will provide sufficient

assistance to the court in addressing these claims, counsel is presently reviewing the state court record, which includes a three-hour video recording of Dassey's confession, a 1,600 page trial transcript and a 1,300 page post-conviction hearing transcript. Counsel must also research the relevant legal authorities, and frame the issues presented within the context of federal habeas review.

10. Dassey's attorneys of record, Laura H. Nirider and Robert J. Dvorak, have informed counsel by email that they do not object this request for a 30-day extension.

For these reasons, undersigned counsel respectfully submits that a 30-day extension to April 13, 2015, is reasonably necessary. Therefore, counsel asks that deadline for Foster to file an answer and brief be extended from March 13, 2015, to April 13, 2015.

Dated at Madison, Wisconsin, this 6th day of March, 2015.

Respectfully submitted,

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s/ Jacob J. Wittwer

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